IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Central Excise Appeal No. 3 of 2005

Texplas India Private Limited
(through its General Manager Sh. Dinesh Gairola)
BHEL Industrial Estate,
Haridwar ...Appellant

Versus

1- The Customs Excise & Service Tax Appellate Tribunal (CESTAT), West Block-2, R. K. Puram, New Delhi.
2- The Commissioner, Customs and Central Excise, Meerut-1, Mangal Pandey Nagar, Meerut. ... Respondents

Sri Pullak Raj Mullick, learned counsel for the appellant.
Learned Addl. S. G. for the Department/respondents.

Dated: June 7, 2007

Coram: Hon'ble P.C. Verma, J.
Hon'ble B.C. Kandpal, J.

This appeal has been preferred against the order dated 15.9.2004/30.11.2004 passed by The Customs Excise & Service Tax Appellate Tribunal (CESTAT), New Delhi in E/Appeal No. 3059/2003-NB(C), whereby the appeal filed by the appellant was rejected.

2. Brief facts of the case giving rise to the appeal are that the appellant is a Private Limited Company engaged in manufacture and sales of electrical insulators, insulating fitting, FRP mouldings and parts of Arms and Ammunition. The appellant was enjoying the benefit of SSI exemption contained in Notification No. 9/2001 dated 1.3.2001. Notification No. 47/2001 dated 1.10.2001 was issued, which amended Notification 9/2001. Thereafter, the

Divisional Deputy Commissioner issued show cause notice No. II(8) Prev./Texplas/DDN/14/2002/1249 dated 17.10.2002 to the appellant. Appellant filed defence reply and also attended personal hearing. Adjudicating Authority passed adjudication order and confirmed a demand of Rs. 1,34,538/- and also levied penalty of Rs. 10,000/-. The appellant preferred first appeal before the Commissioner (Appeals), Central Excise, Meerut-I, Meerut, who upheld the orders of the Adjudicating Authority, however, dropped the penalty of Rs. 10,000/-. Feeling aggrieved by the aforesaid order, the appellant filed an appeal before the respondent no. 1/The Customs Excise & Service Tax Appellate Tribunal, New Delhi. Feeling aggrieved by the aforesaid order, the appellant filed Second Appeal before the Customs, Excise & Service Tax Appellate Tribunal. The Tribunal initially granted a stay order directing the appellant to deposit Rs. 50,000/- and in compliance of the order of the Tribunal, the appellant deposited a sum of Rs. 50,000/-. Thereafter, the respondent no. 1 dismissed the appeal of the appellant and upheld the orders of the Commissioner (Appeals), Meerut and consequent to the order passed by the Tribunal the respondent no. 2 directed the appellant to deposit the balance amount of Rs. 85000/-.

3- Feeling aggrieved by the orders of the Tribunal, the appellant has filed this appeal before this Court.

4- We have heard learned counsel for the parties and perused the record.

5- Vide Amendment by Notification No. 37/2001 dated 1.10.2001, the first clearances up to an aggregate value has to be completed for the purpose of allowing partial exemption as provided under Serial No. 1 of the Table below the Notification. The object of the proviso shows that the clearances of the good falling under Heading 93.05. to 93.07 has to be taken into account, while computing the aggregate value of the clearances at Nill rate of duty and as such the demand of duty confirmed by the Revenue cannot be said to be against the provisions of amended law.

6- The lower authorities have considered the issue at length and in the right perspective of the law. This appeal involves no substantial question of law to be answered by this court.

7- The appeal lacks merit and is liable to be dismissed. Accordingly, the appeal is dismissed. The impugned orders passed by the lower authorities are hereby confirmed. No order as to costs.

(B.C. Kandpal, J.) **(P.C. Verma, J.)**

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